

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Toll Free Service)

Access Codes)

CC Docket No. 95-155

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COMMENTS OF AVIS RENT A CAR

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

AVIS Rent A Car System, Inc. ("AVIS"), by its attorneys, hereby files its comments in response to the Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding. As one of the premiere vehicle leasing agencies in the world, AVIS subscribes to hundreds of toll free numbers in order to afford its customers and travel agents a free and convenient mechanism to make reservations and obtain information from AVIS.

As the initial toll free access code, 800 service has become an invaluable tool for virtually every sector of the U.S. economy. 800 service has not only dramatically enhanced the ability of consumers to communicate with businesses, but undoubtedly also has increased beneficial use of the public switched network. The Federal Communications Commission ("FCC" or "Commission") has made a compelling case for its involvement in ensuring that toll free access codes are not prematurely depleted. As an active participant in the 800 industry, AVIS is painfully aware of the dangers of warehousing on the availability of toll free numbers. AVIS also is concerned about the harm that is created by unscrupulous entities who, motivated by either a "get rich quick" mentality or by a desire to obstruct the

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legitimate use of such numbers, attempt to "hold hostage" particular 800 numbers anticipated to be of use to large corporations such as AVIS. As described more thoroughly below, AVIS fully supports any and all FCC efforts to prevent such abuses from occurring. Nevertheless, AVIS also respectfully suggests that such involvement by the FCC be tailored so as not to compromise the ability of 888, and future, toll free access codes to evolve into as valuable a consumer service and business tool as 800 service has become.

I. PREVENTING WAREHOUSING OF TOLL FREE NUMBERS

As the Commission is acutely aware, the problem of warehousing toll free numbers is a critical one. Warehousing has a devastating impact on the efficient allocation of toll free numbers. It creates an artificial shortage of a valuable commodity to the detriment of legitimate subscribers of such numbers. This, in turn, unfairly limits consumer access to the benefits of toll free access codes.

AVIS firmly believes that the Commission's proposed escrow requirement will assist in the reduction of warehousing.^{1/} The payment of a one time deposit into an escrow account for each toll free number held in reserved status, as proposed by the Commission, will create an economic disincentive against unnecessarily or inefficiently withdrawing toll free numbers from circulation. Clearly, the fewer numbers held in reserve the more numbers are available for assignment.

^{1/} See, e.g., Toll Free Service Access Codes, Notice of Proposed Rulemaking, FCC No. 95-419 (released October 5, 1995)("Notice") at para. 14.

AVIS recommends that the FCC impose the deposit requirement only on Responsible Organizations ("RespOrgs"), toll free service providers, and third party agents (entities who have the ability to warehouse numbers), and that such entities be prohibited from passing along the escrow charge to toll free service subscribers. As the Commission recognized, its goal in requiring a deposit is "to encourage a more efficient use of toll free numbers."^{2/} Virtually every instance of inefficient use of such numbers cited by the Commission involved scenarios for which the subscriber is not responsible. For example, the assignment of a toll free number to subscribers who have not requested them and warehousing^{3/} are problems created by RespOrgs, toll free service providers, and/or third party agents -- not subscribers. The efficient allocation of numbers is primarily within the control of RespOrgs, toll free service providers, and third party agents. These are the entities that should be held responsible for accurately predicting how many toll free numbers should be reserved. If these entities are allowed to pass on the escrow deposit to subscribers, it will mitigate the economic incentive such entities would have to efficiently allocate the numbers.

If the Commission nevertheless decides to impose a deposit requirement on subscribers or allows the deposit to be passed along to subscribers, that burden should be borne only in a limited and targeted manner. AVIS suggests that subscribers pay the escrow

^{2/} Id. at para. 14.

^{3/} See, e.g., id. at n. 69 (defining warehousing as "a *RespOrg* obtaining toll free numbers from the database without having an actual subscriber for whom those numbers are being reserved. Warehousing results in the *RespOrg*'s acquiring and holding scarce toll free numbers beyond the *RespOrg*'s immediate needs and prevents the distribution of those numbers to *RespOrgs* that have actual subscribers needing working toll free numbers.")(emphasis added)

deposit only if they seek to reserve an additional toll free number when their monthly usage for their existing numbers do not exceed a predetermined number of monthly minutes of use. Subscribers that exceeded that predetermined number would be deemed to have a justified need for an additional toll free number (thereby mitigating any likelihood of hoarding the number) and thus should not be required to pay an escrow deposit.

II. PREVENTING TRAFFICKING IN TOLL FREE NUMBERS

Although there are voluntary industry guidelines that prohibit the trafficking in toll free numbers,^{4/} trafficking nevertheless is a chronic problem.^{5/} Indeed, as the Commission implicitly recognized, the sale and barter of toll free numbers undoubtedly has played a critical role in the rapid depletion of 800 numbers and threatens to become as great or greater a problem in the deployment of future toll free access codes. Given the severity of this problem, AVIS supports any and all efforts by the Commission and other responsible entities to discourage such trafficking.

In this context, AVIS supports the Commission's proposal that entities found to have engaged in such trafficking be required to forfeit their escrow deposits.^{6/} While this

^{4/} See id. at n. 41.

^{5/} As an example of the scope of the problem, AVIS is approached at least once approximately every two or three months by unscrupulous prospectors who have obtained toll free numbers anticipated to be of value to AVIS for which they are seeking payment in return for the relinquishment of such numbers. Alternatively, these entities obtain toll free numbers anticipated to be of value to AVIS merely to prevent AVIS from acquiring such numbers.

^{6/} Notice at para. 16. As AVIS recommended above, however, it does not support the imposition of an escrow deposit on subscribers.

proposal is a valuable first step in discouraging trafficking in toll free numbers, AVIS recommends that it be supplemented to be more effective in curbing such abuse.

Specifically, AVIS recommends that a neutral administrative body (either the FCC or the North American Numbering Plan administrator) be empowered to investigate and prosecute instances of toll free trafficking. Companies that are the targets of such trafficking would then have the opportunity to formally notify the administrative body of the abuse.^{7/} The administrative body should be empowered to impose sanctions in addition to those proposed in the Notice on entities found to be trafficking in toll free numbers. Such sanctions could include monetary damages, suspension of FCC and/or state authorizations for common carrier abusers, and criminal referrals, if appropriate.

AVIS also supports the proposal to use standard industry classification ("SIC") codes to bar competitors of the current holder of an 800 number from obtaining the equivalent number in subsequent toll free codes.^{8/} However, while the use of SICs presents some measure of protection against competitors trafficking in toll free numbers, AVIS respectfully suggests that use of such codes would be ineffective against traffickers who are not competitors. Specifically, it would not effectively deter speculators who obtain toll free numbers in hopes of financial gain, rather than those who seek to stymie their competitors' operations.^{9/}

^{7/} The administrative body should also have the power to investigate and prosecute on its own motion.

^{8/} Id. at paras. 44-45.

^{9/} As discussed below, however, the right of first refusal would dramatically assist in preventing such numbers from becoming available to speculators.

In addition, the use of the SIC as proposed in the Notice may be ineffective to prevent the blocking of toll free numbers by multi-SIC companies. For example, suppose it could be foreseen that Company X would want a particular toll free number. Company Y has the same SIC as Company X, but Company Y also has a subsidiary under its control that has a different SIC. As a consequence, Company Y would not be prevented under the Notice's proposal from directing its subsidiary to obtain the toll free number of use to Company X. While providing Company X with the right of first refusal would dramatically reduce such fraud, if the Commission's SIC proposal is adopted, it may be necessary to ensure that Company Y's subsidiary are assigned Company Y's SIC, in addition to their own.

III. THE USE OF VANITY NUMBERS

AVIS strongly supports the FCC's proposal that the current holder of an 800 vanity number should have a right of first refusal or other priority on the equivalent number drawn from a new toll free code.^{10/} The Commission consistently has recognized the importance of protecting the investments made in vanity 800 numbers.^{11/} Unless there is a meaningful

^{10/} Notice at para. 35. Like the Commission's use of the term, AVIS use of "vanity number" means "any numbers in which the holders have a particular interest." *Id.* AVIS recommends that the Commission create some mechanism by which current 800 holders would identify which numbers they consider to be vanity numbers. To prevent abuse, there could be a requirement to verify actual and beneficial use of such numbers.

^{11/} See, e.g., Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd. 5880, 5904 (1991); Remarks of Commissioner Barrett at the Texatel Trade Show, 1990 FCC LEXIS 4297.

opportunity for continuity in equivalent toll free numbers, there is likely to be unnecessary customer confusion. Customers have come to associate certain numbers with particular companies. This is due in large part to the substantial investment in advertising such 800 numbers and establishing a reputation for them by 800 number holders, such as AVIS. AVIS alone has spent millions of dollars on marketing its 800 numbers.

As a mechanism for effectuating such a right of first refusal, AVIS suggests that in anticipation of the introduction of each new toll free access code, the current holders of equivalent numbers in the preceding access codes be given a right of first refusal to be exercised within a specified and limited time period immediately prior to the introduction of the code. As soon as the current holder declines to accept the equivalent number, or upon the expiration of the time period, the equivalent numbers would be available for use on a first-come first-serve basis, perhaps with a lottery or auction in the event of a tie.

AVIS respectfully believes that it would be inequitable to require a payment in order to exercise a right of first refusal in the toll free number context. In the absence of evidence of abuse, existing subscribers of 800 numbers with active and beneficial use of their 800 numbers have demonstrated a proven "track record" that warrants receipt of a right of first refusal without payment. Many 800 number holders, such as AVIS, have already invested substantial resources in advertising their 800 numbers and establishing a reputation for them. To require an additional payment for the logical extension of their investment (i.e., the opportunity to obtain the equivalent number in the next toll free access code) would be

unfair, particularly if the FCC determines that subscribers are required to pay escrow deposits in addition to their monthly charge.^{12/}

IV. DEPLOYMENT OF FUTURE TOLL FREE NUMBERS

AVIS suggests that the Commission, the toll free number administrator, and the toll free industry take all measures necessary to ensure that the transition to new access codes occurs in a manner that is imperceptible to end-users. Toll free access codes owe their success to being valuable customer service aids. The viability of such codes will be severely compromised if callers make calls that do not "go through" or otherwise meet with a system failure in attempting to reach the business they have dialed. As a consequence, AVIS supports the Commission's efforts to ensure that there is no degradation in the performance of the SMS whenever there is a high volume of activity on the data links.^{13/} Similarly, AVIS recommends that whatever mechanism the Commission requires to ensure the efficient routing of toll free codes,^{14/} that there be no perceptible adverse consequence to callers.

On a related note, while AVIS does not advocate a specific time frame, it does support deployment of new access codes as soon as possible to avoid the recurrence of the

^{12/} There is unlikely to be a significant number of instances in which the right of first refusal is actually exercised. By way of example, of the approximately 250 800 numbers currently used by AVIS, AVIS only considers approximately 50 of them to be vanity numbers.

^{13/} Notice at para. 25.

^{14/} Id. at para. 30.

potential depletion and rationing that recently occurred with 800 numbers.^{15/} In general, AVIS supports a percentage approach because it gives predictability to the industry and avoids the confusion and anxiety associated with the depletion of 800 numbers.

V. LAG-TIME

While AVIS recognizes the Commission's desire to expedite the time within which toll free numbers are available for distribution, AVIS supports maintaining the existing lagtime timeframes rather than the expedited schedule proposed in the Notice.^{16/} AVIS is concerned that a shorter lagtime will generate a greater number of misdialed numbers. As the Commission recognized,^{17/} misdialed toll free calls result in payments or delayed credits by subscribers, lost business, and customer frustration. If the Commission wants to ensure more toll free numbers in circulation, it may wish to increase the escrow deposit to provide a financial incentive for this outcome.

VI. USE OF PINS

AVIS does not support the use of PINs to access businesses.^{18/} As the Commission recognized,^{19/} PINs will limit number portability, an issue of great concern to businesses

^{15/} See id. at para. 27.

^{16/} Id. at paras. 18-19.

^{17/} Id. at para. 47.

^{18/} Id. at para. 20.

^{19/} Id. at para. 21.

who are being approached by alternative carriers. Similarly, the imposition of dialing additional digits necessitated by PINS is likely to deter consumers from calling businesses. The greater the number of digits dialed, the more reluctant consumers will be to make the call, and the more difficult it will be for them to remember telephone numbers, something of concern to businesses, like AVIS who have devoted considerable resources to generating customer recognition of toll free numbers. Moreover, the greater the number of digits, the greater the likelihood of misdialing and the greater the associated adverse consequences to subscribers. Given these drawbacks and the apparent absence of evidence that PINs are necessary to increase the number of available toll free numbers, particularly if the FCC adopts many of the proposals contained in its Notice, the adoption of PINs does not appear warranted.

Respectfully submitted,

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November 1, 1995